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THE

INTERIM

A REPORT OF INTERIM ACTIVITY . . . MONTANA LEGISLATIVE COUNCIL . . . HELENA

OCTOBER 1981

PLEASE RETURN

Vol. III, No. 5

SPECIAL SESSION

NOVEMBER 16
IS PROBABLY

A most often asked question these days is, "When is the special session?" Nearly everyone knows that November 16 has been seriously suggested, but certainty is sought. There is no certainty. The latest word from the Governor and the leadership is to anticipate a special session beginning the 16th of November. A formal call will not be issued until the Governor is convinced all necessary information is available for the session. That call, if issued for the November date, can be expected around the 1st of November. In the meantime, if you see a good deal on a turkey, you might pop it in the freezer in case you are still home or back home to eat it on Thanksgiving.

STATE DOCUMENTS COLLECTION

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BLOCK GRANTS
SUMMARIZED

The following general summary of federal block grant provisions as they stand today was prepared by Lee Heiman, a staff attorney with the Legislative Council. The summary provides answers to the questions most often asked about the block grants. The Office of the Fiscal Analyst and Lee have been delving into great detail on the block grant issue, and their information will be available for a special session. This summary may help fill some gaps until then.

LEGISLATIVE
HEARINGS

Some block grants require an annual hearing by the legislature on the use and distribution of the block grant fund. Since no formal legislative action is required, this requirement would probably be fulfilled by a hearing conducted by a statutory or permanent legislative committee. The block grants requiring such hearings are the Preventive Health and Health Services, Alcohol and Drug Abuse and Mental Health Services, the Primary Care Block Grants, and the Community Services Block Grants.

APPROPRIATION
AUTHORIZATION

The Omnibus Budget Reconciliation Act does not in itself appropriate money for block grants. It does set caps on what may be appropriated. They provide that "there are authorized to be appropriated" ... dollars. These caps were heavily debated during the passage of the Act and were considered to be close to what the actual appropriation would be. The Reagan administration

is requesting that the appropriations for all programs, including block grants, be reduced from that authorized in the Reconciliation Act. Details are not known at this time. The President has asked for a 12% reduction from his March proposals. The Low-Income Energy Assistance block grant may be cut 25% from the level in the Reconciliation Act. Until the federal appropriations are set, federal funding will be authorized by a continuing resolution allowing federal expenditures somewhere near what the final budget is expected to be. The final appropriations will not be known for some time.

BLOCK GRANTS GENERALLY

Federal block grants were enacted in the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) on August 13, 1981, to replace 57 categorical programs. The block grants as proposed by the administration were more comprehensive and less restrictive than those passed by Congress. As passed, block grants contain some restrictions or mandates in use, but generally these restrictions are statutory, with the applicable department secretary restricted in establishing by rule other criteria for grant use. The federal rules for block grant implementation are expected to be bare bones rules governing only those areas required to be covered by law or necessary for the administration of the block grant. Because the Omnibus Budget Reconciliation Act repealed or substantially amended existing statutes on categorical grants, it has virtually wiped out all present federal regulations governing present categorical programs.

The administration of block grants provides that a state describe how it will use block grant money without the need for federal approval of those uses. The state would then so use the funds with suitable follow-up examination by the federal government.

There are provisions in each block grant relating to its general area of use, and in some instances, specific spending level requirements for various functions. Usually the more detailed requirements are related to phasing-in the block grant and, after several years, expire or become less detailed.

TRANSITION PROVISIONS FOR BLOCK GRANTS

Title XVII of the Omnibus Budget Reconciliation Act is a transition schedule for block grants. Its provisions provide:

(1) The state is to prepare a report on the proposed use of the block grant, and beginning FY 1983, also report on the actual use of the funds received the prior fiscal year.

(2) Public hearings are to be held on the report.

(3) At least 30 days prior to any fiscal quarter for FY 1982 (October 1, 1981, January 1, 1982, April 1, 1982, July 1, 1982) the state may apply for block grants. Until block grants are received by a state they will continue to receive applicable categorical grants subject to lower appropriations.

(4) Financial compliance and audit requirements.

As interpreted by the U.S. Department of Health and Human Services, the Social Services and the Low-Income Energy Assistance block grants fall outside the transition provisions; thus the Department is requiring applications for the block grants by October 1, 1981. Failure to apply will result in a complete loss of the state's allocations under the block grants for federal fiscal year (FFY) 1982. The block grants that are effective this year allow for transitional applications for each of the fiscal quarters of FFY 1982 (September 15 for October 1; December 1 for January 1, 1982; March 1 for April 30; and May 31 for July 1). The block grants that become effective FY 1983 (October 1, 1982) are the Primary Care block grant and the Elementary and Secondary Education block grant (effective October 1, 1982, but applications are due April-June 1982, with fund distribution on July 1, 1982, to conform to school year needs).

Except for the Social Services and the Low-Income Energy Assistance block grants, those block grants that are effective this federal fiscal year that the state chooses not to administer continue to operate as separate categorical programs under former law subject to proportionate reductions in amounts states will receive.

The U.S. Department of Health and Human Services has determined that for the block grants that it administers (all but Education and Community Development) there is no requirement for a proposed use report or public hearings for initial application for block grants. This interpretation has been questioned and it is suggested that the reports be prepared as required by the transition provisions and public hearings be held. Neither term is defined so presumably minimal compliance with statutory requirements is sufficient. These probably are easily satisfied by following minimal statutory guidelines during the course of formulating state policy on administration of the grants.

INDIAN TRIBES

Generally, tribes are on the same standing as any other entity in competing for block grant distribution from the state. Tribes do have the ability to request that they receive funds directly in the Community Services, Preventive Health, Alcohol and Drug Abuse and Mental

Health, Primary Care, and Home Energy Assistance Block Grants. The Department of Health and Human Services has indicated that it will allow tribes to receive funds as a matter of course. Tribal allotments are subtracted from the state's allotment.

TRANSFER
PROVISIONS

Some block grants provide that a certain percentage of the grant may be transferred to similar grants.

LEGISLATIVE COUNCIL

BILL DRAFTING
FOR SPECIAL
SESSION

The standard Legislative Council bill drafting policy is written to apply to regular sessions only. The Council is working to adopt a reasonable policy for a special session should one ensue. A temporary policy to hold all drafting requests related to the special session until adoption of the final policy has been instituted. Adoption of a final policy will be on the agenda for an October 20 meeting of the Council.

PUBLICATION
COSTS AND
AVAILABILITY

The following Legislative Council publications will be available at the date indicated:

| | |
|---------------------------------|-----------------------------|
| Session Laws - \$60.00 | Now (Since Sept. 1) |
| Journals - | October |
| Legislative Review - \$6.00 | Now |
| Codes - Private - \$150.00 | October |
| Public - \$130.00 | October |
| Codes on Microfiche - \$6.00 | Now |
| Annotations - \$175.00 (for the | Now for 34 Titles |
| 34 Titles that are done now) | October for Constitution |
| \$250.00 (total estimated | November for Titles 45 & 26 |
| cost when annotations are | On irregular basis during |
| completed in January 1983) | next year for remaining |
| | 14 Titles |

CODES FOR
LEGISLATORS

An order blank has been enclosed for the use of legislators in ordering a set of the Montana Code Annotated. Chapter 382, Laws of 1981, provides that copies of the MCA be made available to legislators at \$10 a set.

LEGAL
ASSISTANCE
AUTHORIZED

The Legislative Council voted at its September 19 meeting to authorize Senator Goodover and Senator Graham to use the legal and research staff of the Legislative Council to prepare and present a case to the courts in an effort to resolve the question of the constitutionality of HB 872 (Chapter 608) and to issue the same grant of authority for any other legislator who for any reason wishes to take the contrary point of view. HB 872 amended the statute that established the Capitol Building and Planning Committee to grant it authority to make decisions in relationship to planning for the Capitol renovation and restoration project.

EDUCATION

MEETING
OCTOBER 23 The second meeting of the Joint Subcommittee on Education is tentatively scheduled for October 23, 1981, at 9:00 a.m. in Room 104 of the Capitol.

NCSL
ASSISTANCE
PROVIDED Dr. Sondra Kissock, Director of Education Programs for NCSL, has pledged financial and technical assistance for various activities of the Subcommittee. She is arranging for several legislators from other states to speak at the October meeting on recent court cases and legislative responses in their states. Dr. Kissock also plans to attend the meeting to explain what technical assistance and projects might be useful to the Subcommittee.

AUDIT RESULTS
TO BE REVIEWED The October 23 agenda will include a presentation by the staff of the Legislative Auditor's office on the recent audits of the foundation program and the Office of Public Instruction. Other agenda items will be announced as soon as the NCSL arrangements are confirmed.

HIGHWAYS

HIGHWAYS
COMMITTEE
IS BUSY The Joint Subcommittee on Highways heard the Director of Highways and representatives of highway users' and contractors' associations during meetings on August 27 and 28. On October 1, the Committee had a meeting scheduled with members of the State Highway Commission. The Highways Committee is tentatively planning a joint meeting with the Transportation Committee during the special session expected to convene in November.

HUMAN SERVICES

MEETING HELD
SEPTEMBER 15 The Joint Subcommittee on Human Services met in Helena on September 15. The Subcommittee heard a report on Montana's residential alcohol treatment programs presented by Carroll South, Department of Institutions Director. They also received an extensive report on services to youth from individuals who plan for youth services, administer youth programs, fund youth programs, refer youth, or directly provide services to youth.

The Subcommittee has tentatively set their next meeting for Sunday, November 15, at 10:00 in Room 104 of the State Capitol, Helena.

JUDICIARY

APPELLATE DELAYS AND JUDICIAL RE- DISTRICTING DISCUSSED SEPTEMBER 25 AND 26

The Joint Subcommittee on Judiciary met September 25 and 26 for a two-day informational session. On September 25, the Committee studied the problem of delays resulting from multiple and successive appeals and petitions for postconviction relief. Members reviewed state and federal postconviction procedures and discussed the constitutionality of a unitary review process. Topics for future study include computerizing transcript preparation, incorporating a contemporaneous objection provision into the state appellate procedure, and permitting the state to seek review of sentences through the Sentence Review Division of the Montana Supreme Court.

On September 26, the discussion topic was judicial redistricting. After a review of district court statistics, the Committee heard testimony from seven judges on their views on altering district boundaries. Members requested additional research on district court financing and the disqualification of judges for the next meeting scheduled for Saturday, November 14, 1981, at 10:00 a.m. in Room 104 of the State Capitol.

TRANSPORTATION

TRANSPORTATION HEARINGS

The second of a pair of public hearings by the Joint Subcommittee on Transportation will be conducted at the Outlaw Inn in Kalispell on Monday, October 26. The first hearing at Glendive on September 21 drew almost 150 people to its two sessions when principal concern centered on the effects of branch line abandonments by Burlington Northern Railway and the crisis situation in highway system improvements. The meetings at Kalispell will begin at 2:00 p.m. and at 7:00 p.m. The afternoon meeting will be an executive session when Committee members will review progress of the study and hear reports from agencies. The evening session will be devoted to hearing citizens' statements on their transportation problems and needs.

ADMINISTRATIVE CODE COMMITTEE

RULES REVIEWED SEPTEMBER 24

The Committee met on September 24 and heard presentations by several persons relating to administrative rules and reviewed 1981 Montana Administrative Register issues 12 through 16.

The Committee heard testimony concerning a lawsuit filed by the Montana Taxpayers' Association to force the Department of Revenue to amend a rule in accordance with SJR 26. The Department of Revenue explained that it would not

COMMITTEE
MAY FILE
FRIEND OF THE
COURT BRIEF
IN TAX CASE

comply with the joint resolution because the statute under which the resolution was passed (2-4-412, MCA) was unconstitutional in the opinion of the Department. The Committee voted to write a letter to the Governor and the Department urging the Department not to challenge the constitutionality of the law and authorizing the Committee staff to file a brief as an amicus curiae if the Department proceeds with its challenge. The Committee also heard testimony relating to procedures to be followed by the State Historical Society in reviewing proposals for cultural and aesthetic grant projects. In other business, the Committee heard a presentation by the Office of the Secretary of State concerning increased fees to be charged for subscriptions to the Administrative Rules of Montana, the Montana Administrative Register, and increased rule filing fees to be charged state agencies by the Secretary of State.

The Committee also voted to send a memorandum to all state agencies alerting them to amendments in the Montana Administrative Procedure Act passed by the 47th Legislature and in reviewing rules of state agencies, voted to object to certain rules proposed by the Highway Department, the Department of Social and Rehabilitation Services, the Board and Department of Lands, and by the Board of Milk Control.

INDIAN AFFAIRS

TO MEET
OCTOBER 7

The Select Committee on Indian Affairs will hold its second meeting on October 7, 1981, at 10:00 a.m., in the tribal council chambers in Pablo, Montana. The meeting will be devoted to a discussion of the state's role in block grants as they pertain to Indian tribes. Public comment is welcome and desired.

ENERGY POLICY COMMITTEE

ERROR NOTED

An error has been noted in the Interim Directory. The Committee membership of the Energy Policy Committee should show Representative Seifert, not Representative Marks. We apologize for the error.

ENVIRONMENTAL QUALITY COUNCIL

ALTERNATIVE
ENERGY
SUBCOMMITTEE

Environmental Quality Council Subcommittees began their work in September and October on various interim assignments. The Alternative Energy Subcommittee, chaired by Senator Harold Dover, met Tuesday, September 29, with the Renewable Energy Advisory Council (REAC). The

Department of Natural Resources and Conservation presented to the EQC subcommittee and to REAC its program for evaluation, monitoring, and restructuring the Renewable Alternative Energy Program. The program, which is funded by 2.25% of coal severance tax revenues, came under fire during the 1981 legislative session. Under HB 398, sponsored by Representative Quillici, EQC is given oversight responsibility for the program. The EQC subcommittee also met with Legislative Auditors to review a program audit completed in March, 1981, in order that duplication would be avoided in EQC's evaluation.

HARD-ROCK
MINING
SUBCOMMITTEE
TO MEET

The EQC's subcommittee on Hard-Rock Mining, chaired by Representative Dave Brown, will hold its first meeting Friday, October 2, in Room 108 at 9:00 a.m. The subcommittee will conduct a public hearing on issues that should be considered in the study, specific problems with HB 718 and ways to improve it, and where future meetings should be held. Officials from the Department of State Lands will discuss hard-rock mining activity in Montana, and those from the Department of Commerce will discuss the impact assistance program under HB 718. The Governor's Office will also discuss appointments to the hard-rock mining board and funding needs for its operations.

Three members of the Revenue Oversight Committee will join EQC subcommittee members in their deliberations. ROC members will serve on the joint subcommittee to advise on the tax implications of the study.

In addition to Representative Brown, EQC members of the subcommittee are Representative Dean Switzer, Senator Mike Halligan, and former Representative Dennis Nathe. ROC members are Representatives Jay Fabrega, Herb Huennekens, and Senator Jack Galt.

EQC STAFF
REORGANIZATION
COMPLETE

With the recent hirings of three Montanans, EQC's staff reorganization is complete. Dr. Howard Johnson, a native Montana who has been a full professor and Director of the Institute of Water Research at Michigan State University, will assume the position of environmental research scientist. John Carter, who has a background in natural resource science and a law degree from the University of Houston, specializing in natural resources law, will begin work as a researcher. Ellen Engstedt, a committee secretary in the House during the 1981 session, completes the staff as administrative assistant, office manager, etc.

EQC TO MEET
IN NOVEMBER

The full EQC will meet in mid-November during the special session. One of the principal agenda items will be review of the events surrounding the endrin controversy and how future situations can be managed.

EQC NEWS-
LETTER TO BE
PUBLISHED

Watch for a new EQC Newsletter that will detail EQC activities and alert readers to important issues affecting Montana's natural and economic environment.

LEGISLATIVE FISCAL ANALYST

MEETING HELD
SEPTEMBER 25

The Legislative Finance Committee met September 25 in a regular meeting to discuss various financial issues and September 26 to select a Legislative Fiscal Analyst. Judy Ripplingale, previously acting Legislative Fiscal Analyst, was appointed to be the Fiscal Analyst.

The Committee voted to request the State Auditor to seek the Attorney General's opinion about implementation of HB 385. This bill provided for an audit of nonprofit health service organizations every four years and an increase in their filing fees. The Auditor has delayed implementation of this act citing a lack of personnel.

The Committee discussed the decision by the Department of Labor to lower the workers' compensation rates charged the Department of Institutions. The Departments of Labor and Institutions said this was done to help the Department of Institutions stay within their appropriation level.

The Department of Institutions presented a proposal to house women prisoners at Warm Springs. The Committee did not take any action pending staff review of the budget. The Department of Institutions plans to provide additional information about a proposed Lakeside location for this prison.

At the October 16 meeting, the Legislative Finance Committee will have a presentation by the Department of Social and Rehabilitation Services and the Department of Health on their budget requests for special session. The Department of Institutions will report on the public hearing held to determine local community reactions to housing prisoners at the Lakeside radar base.

DISTRICTING AND APPORTIONMENT COMMISSION

OCTOBER 16
DATE SET

The next meeting of the Districting and Apportionment Commission is scheduled for October 16 in Room 415 of the State Capitol in Helena. Although an agenda has not yet been finalized for the meeting, the Commission probably will establish a congressional boundary line, discuss the situation on Malstrom Air Force Base from the philosophical, legal, and practical standpoints (without doing the nitty gritty work of defining district lines), and begin developing a tentative legislative plan for the rural eastern portion of Montana.

SJR 34 COMMITTEE

MEMBERS
DESIGNATED

The Committee on Committees and the Speaker have designated the members of the SJR 34 advisory committee announced last month. The members are:


| | | | |
|----------|------------------|-----------------|---------------|
| Senators | Jan Johnson Wolf | Representatives | Bob Pavlovich |
| | Tom Hager | | Joe Kanduch |
| | Bill Norman | | Cal Winslow |
| | Bill Thomas | | Burt Hurwitz |

TO: Legislative Council
Room 138, State Capitol
Helena MT 59620

Send me the Montana Code Annotated (statute text and histories) as soon as it is available. In accordance with Chapter 382, Laws of 1981, I enclose payment of \$10.


Legislator

LEGISLATIVE INTERIM CALENDAR

| OCTOBER | | | THURSDAY | | FRIDAY | | SATURDAY | |
|---------|--|---------|---|---|---|----------|---|--|
| SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY | | |
| | | | | 1 HIGHWAY COMMITTEE RM 104 10:00 am | 2 EQC - HARD ROCK MINING SUBCOMMITTEE RM 108 9:00 am | 3 | | |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 | | |
| 11 | 12 | 13 | 14 | 15 | 16 DISTRICTING & APPORTIONMENT RM 415 10:00 am LEGISLATIVE FINANCE COMMITTEE RM 104 | 17 | | |
| 18 | 19 | 20 | 21 | 22 | 23 SUBCOMMITTEE ON EDUCATION RM 104 9:00 am | 24 | | |
| 25 | 26 Subcommittee on Transportation Hearing Kalispell Outlaw Inn | 27 | 28 Subcommittee on Business Hearing Billings Location TBA | 29 | 30 | 31 |  Happy Halloween | |

Meeting dates subject to change

LEGISLATIVE INTERIM CALENDAR
NOVEMBER

| SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY |
|--|---|---------|---|---|--------|------------------------------------|
| 1 | 2 Nancy Committees begin to meet if special session 16th. (tentative) | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 JUDICIARY PM 104 10:00 am |
| 15 Subcommittee on Human Services 10 am Room 104 (tentative) | 16 Special Session (Tentative) | 17 | 18 Subcommittee on Business Hearing at Capitol 7 pm (tentative) | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 Thanksgiving Greetings  | 27 | 28 |
| 29 | 30 | | | | | |

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DEADHEAD

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